

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DIANE RICE**, on February 9, 2005 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Diane Rice, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Ron Stoker, Vice Chairman (R)
Rep. Arlene Becker (D)
Rep. Robyn Driscoll (D)
Rep. George Everett (R)
Rep. Gail Gutsche (D)
Rep. Roger Koopman (R)
Rep. Michael Lange (R)
Rep. Tom McGillvray (R)
Rep. Mark E. Noennig (R)
Rep. Art Noonan (D)
Rep. John Parker (D)
Rep. Jon Sonju (R)
Rep. John Ward (R)
Rep. Bill Wilson (D)
Rep. Jeanne Windham (D)

Members Excused: Rep. Christopher Harris (D)

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 91, HB 374, 2/23/2005
Executive Action: HB 446-Tabled, HB 366 Do Pass As Amended

HEARING ON HB 520

Sponsor: REP. KEVIN FUREY, HD 91, MISSOULA

Opening Statement by Sponsor:

REP. KEVIN FUREY (D), HD 91, opened the hearing on HB 520, Exemption from minor in possession when reporting a sexual-related offense. The REPRESENTATIVE spoke to the committee about incidents where minors who have been drinking will not report crimes.

EXHIBIT(juh32a01)

{Tape: 1; Side: A; Approx. Time Counter: 0 - 93}

Proponents' Testimony:

John Connor, Assistant Attorney General (AG), rose in support of HB 520. He stated that when the bill was originally drafted, it stated that a person could not be prosecuted for a Minor in Possession (MIP) as a result of providing information in a sexual assault investigation. After discussing this language with members of the AG's office, the general consensus was to design a bill that stated, "...any statements made in the course of the investigation of the assault could not be used against the person."

{Tape: 1; Side: A; Approx. Time Counter: 93 - 122}

Kate Cholewa, Montana Coalition Against Domestic and Sexual Violence, rose in support of HB 520. She informed the committee that the reporting of false claims of rape is about 1.6% which is on par or even less than other crimes. Ms. Cholewa stated, "Rape is an under-reported crime."

{Tape: 1; Side: A; Approx. Time Counter: 122 - 156}

Jessica Grennah, Associated Students of the University of Montana, spoke to the committee about the statistic that stated there is a one in four chances of being raped while a student at college. She also informed the committee that women less than 30 years of age represent 80% of rapes.

EXHIBIT(juh32a02)

EXHIBIT(juh32a03)

Please Note: Ms. Grennah handed in written statements that are included in Exhibit 3.

{Tape: 1; Side: A; Approx. Time Counter: 156 - 199}

Orrum Teaberry, student-Capital High School, rose in support of HB 520.

{Tape: 1; Side: A; Approx. Time Counter: 199 - 205}

Denver Henderson, student-University of Montana, rose in support of HB 520.

{Tape: 1; Side: A; Approx. Time Counter: 205 - 213}

Jayce Christiansen, student-University of Montana, spoke to the committee regarding young men who were assaulted in the same manner as women.

{Tape: 1; Side: A; Approx. Time Counter: 213 - 231}

Opponents' Testimony:

REP. RICE handed in the written testimony of a woman named Connie Summers who is a lobbyist for the Associated Students of Montana State University-Billings.

EXHIBIT(juh32a04)

{Tape: 1; Side: A; Approx. Time Counter: 231 - 237}

Informational Testimony: None

Questions from Committee Members and Responses:

REP. BECKER questioned the sponsor about any amendments for this bill regarding for language to include, "...medical exams." **REP. FUREY** referred the question to Mr. Connor. **Mr. Connor** agreed that any statements made during a medical exam could be suitable language.

REP. CLARK queried Mr. Connor about the language in this bill regarding self-incrimination when reporting a crime. **Mr. Connor** replied that if that information is given in the course of questioning at the commission of a crime it could not be used; however, if it is given voluntarily, that information could be used to bring charges against that person.

REP. EVERETT asked Mr. Connor if drugs or marijuana were considered when writing this bill. **Mr. Connor** replied that they had not thought of that at the time of writing this bill.

REP. KOOPMAN began his questioning of Mr. Connor. The REPRESENTATIVE referred to the language on Page 4, Line 28. **Mr. Connor** spoke to the committee again about the language in HB 520 and what type of other criterion would be applicable for charges to be filed for MIPs.

REP. STOKER then questioned Mr. Connor about the tolerance level of law enforcement officers as well as judgement calls that need to be made while in the field regarding MIPs.

REP. CLARK asked Ms. Cholewa to explain to the committee members the time frame of when an assault is committed and then reported to law enforcement. **Ms. Cholewa** stated that when minors are involved, it is about 72 hours from the time of assault to the reporting of that assault. She said that there are certain situations where several days may have elapsed before the report is made. These cases may be because the victim knows the offender or is just trying to adjust to this event. **REP. CLARK** then stated that after 72 hours, no alcohol could be detected.

{Tape: 1; Side: A; Approx. Time Counter: 237 - 500}

{Tape: 1; Side: B; Approx. Time Counter: 0 - 47}

Closing by Sponsor:

REP. FUREY closed the hearing on HB 520 and stated to the committee that he would get together with Mr. Connor to work on the suggested amendment.

{Tape: 1; Side: B; Approx. Time Counter: 47 - 88}

HEARING ON HB 476

Sponsor: **REP. DAVE MCALPIN, HD 94, MISSOULA**

Opening Statement by Sponsor:

REP. DAVE MCALPIN (D), HD 94, opened the hearing on **HB 476**, Increase marriage license fees for funding domestic & sexual violence victims' services such as compliance officers and funding the counseling for offenders.

{Tape: 1; Side: B; Approx. Time Counter: 88 - 136}

Proponents' Testimony:

Kate Cholewa, Montana Coalition Against Domestic and Sexual Violence, spoke to the committee in support of HB 476. **Ms. Cholewa** informed the committee that this fee has not increased since 1981. The money will be used for counseling and other services for women and their families who are victims of domestic violence.

{Tape: 1; Side: B; Approx. Time Counter: 136 - 181}

Nancy Sweeney, Lewis and Clark County-Clerk of Court, personally rose in support of HB 476.

{Tape: 1; Side: B; Approx. Time Counter: 181 - 203}

Donetta Klein, Montana Coalition Against Domestic and Sexual Violence, spoke to the committee about the lack of funding for these programs and that offenders are not held accountable due to lack of no one follow-up on the fines that offenders have been ordered to pay.

{Tape: 1; Side: B; Approx. Time Counter: 203 - 260}

Kelsen Young, Montana Coalition Against Domestic and Sexual Violence, rose in support and provided the written testimony of Jane Davis.

[EXHIBIT\(juh32a05\)](#)

{Tape: 1; Side: B; Approx. Time Counter: 260 - 295}

Ethan Herman, attorney-Montana Legal Services, rose to speak about his support of HB 476. **Mr. Herman** stated that the rate of recidivism is extremely high in these types of offenders due to the lack of accountability. He further stated that in a short time this bill/resource would be self-sustaining.

{Tape: 1; Side: B; Approx. Time Counter: 295 - 336}

Opponents' Testimony: None

Informational Testimony:

Wendy Sturn, Montana Board of Crime Control, informed the committee members that these funds will work with a block grant that has been received and that her department will administer the money. **Ms. Sturn** did report that in Flathead County and Lewis and Clark County, the programs have been very successful with the implementation and results of their compliance programs.

[EXHIBIT\(juh32a06\)](#)

[EXHIBIT\(juh32a07\)](#)

{Tape: 1; Side: B; Approx. Time Counter: 336 - 442}

Questions from Committee Members and Responses:

REP. KOOPMAN spoke with the sponsor about the requirement for the offenders (usually men) to pay for the counseling of their victims. **REP. KOOPMAN** then asked the sponsor, "...[we] should have the offender pay this fund also." **REP. MCALPIN** responded, "That would never happen." **REP. KOOPMAN** was then interested in the idea of making this a voluntary donation at the time of obtaining a marriage license. The sponsor stated that he did not think that would work.

REP. SONJU began his questions by speaking with Ms. Cholewa and inquiring about the offender's inability to pay for their counseling.

Ms. Cholewa informed the REPRESENTATIVE and the rest of the committee that when an offender is unable to pay for his counseling, the offender is encouraged to pay. Sometimes the fee is waived for his counseling. She stated that when the offender does attend counseling, the recidivism rate decreases.

REP. SONJU was interested in the fiscal note, asking if the fee was decreased from \$20 to \$10, what effect that monetary decrease would have on this bill. **Ms. Cholewa** stated, "...less compliance workers would be hired."

REP. STOKER spoke with Ms. Sturn about the counties that are chosen for this program and what criterion is used to decide what counties. **Ms. Sturn** stated that there would be a competitive grant process to determine which county would receive the program.

REP. RICE asked Ms. Sturn about the number of domestic violence programs currently in Montana. **Ms. Sturn** replied, "...approximately 50...." She then distributed the list to the committee members.

EXHIBIT (juh32a08)

{Tape: 1; Side: B; Approx. Time Counter: 442 - 500}

{Tape: 2; Side: A; Approx. Time Counter: 0 - 108}

Closing by Sponsor:

REP. MCALPIN closed the hearing on HB 476.

{Tape: 2; Side: A; Approx. Time Counter: 108 - 129}

HEARING ON HB 446

Sponsor: **REP. RICK MAEDJE, HD 2, FORTINE**

Opening Statement by Sponsor:

REP. RICK MAEDJE (R), HD 2, opened the hearing on **HB 446**, a constitutional amendment to give legislature power to suspend administrative law. **REP. MAEDJE** informed the committee members that this bill was brought because administrative rule-making is given to the departments at the State of Montana; however, the rule-making is being done without the intent of the bill being taken into consideration or followed.

He further stated that if this bill were to pass, the bill would apply when the legislature is not in session and the responsibility to determine if the intent of the rule is being applied would then be delegated to a committee of legislators. This bill would pertain to only administrative rules.

REP. MAEDJE finished his statements by saying that "term limits" have had an effect on "institutional memory" and that this bill would direct the various agencies to listen to the legislature. *{Tape: 2; Side: A; Approx. Time Counter: 129 - 260}*

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. PARKER questioned **REP. MAEDJE** regarding how in practice this would work. **REP. MAEDJE** explained that for example, there would be one Senator and two Representatives appointed. They would then investigate the specific issue in question and would have the authority to suspend that rule until the legislature is in session again.

REP. NOONAN was interested in knowing how the federal government works with problems such as these within the administrative rule. **REP. NOONAN** expressed his concern that if this bill were to pass, it would just add another level to the government bureaucracy. If the appointed legislators for some reason did not like the bill in it's original form, they could virtually "...take another shot" at eliminating that bill by suspending that rule for the two years until the legislative session began again.

REP. NOENNIG expressed his concern about this bill regarding the work that interim committees do when the legislature is not in session and how that work would interface with what **REP. MAEDJE** has proposed.

REP. CLARK inquired of the sponsor to explain how the appointees would be chosen, "...those who support or those who did not support the legislation that is being questioned." **REP. MAEDJE** replied, "However the legislature would want to set the criteria, as long as it would be equal."

REP. PARKER asked **REP. MAEDJE** this one question, "Couldn't the interim committee deal with this legislation?"

REP. MAEDJE replied, "...I suppose so, however; we are encroaching on executive power...."

{Tape: 2; Side: A; Approx. Time Counter: 260 - 500}

{Tape: 2; Side: B; Approx. Time Counter: 0 - 87}

Closing by Sponsor:

REP. MAEDJE closed the hearing on HB 446 and informed the committee that if this bill doesn't pass this session; he will be back next session with the same bill.

{Tape: 2; Side: B; Approx. Time Counter: 87 - 120}

EXECUTIVE ACTION ON HB 446

Motion: **REP. STOKER** moved that HB 446 DO PASS.

Discussion:

The committee members discussed the bill and requested of REPS. LANGE and PARKER to explain to them how the Law and Justice Interim Committee had focused on the issues within this bill.

Vote: Motion failed 7-11 by roll call vote with **REP. EVERETT**, **REP. KOOPMAN**, **REP. LANGE**, **REP. MCGILLVRAY**, **REP. RICE**, **REP. SONJU**, and **REP. WARD** voting aye. (**REPS. EVERETT** (who had left the room), **HARRIS** voted by proxy vote.)

Motion/Vote: **REP. NOENNIG** moved that HB 446 BE TABLED AND THE VOTE REVERSED. Motion carried by voice vote. (**REP. HARRIS** voted by proxy vote.)

{Tape: 2; Side: B; Approx. Time Counter: 120 - 450}

EXECUTIVE ACTION ON HB 476

Please note that no motion was made; this was just a discussion period at this time.

Mr. MacMaster explained to the committee the conceptual amendment. **REP. KOOPMAN** stated that he would like the fee to be doubled to \$40 and make it a voluntary fee. After some discussion, the committee decided to **RESCIND THE ACTION ON HB 476** until the conceptual amendment was completed.

{Tape: 2; Side: B; Approx. Time Counter: 450 - 477}

EXECUTIVE ACTION ON HB 366

Motion: REP. KOOPMAN moved that HB 366 DO PASS.

Discussion:

Motion: REP. PARKER moved that HB 366 BE AMENDED by STRIKING SECTION 7.

Discussion:

The committee discussed the amendment with REP. CLARK who stated that he found Section 7, Subsection 2 to be problematic also.

Substitute Motion/Vote: REP. CLARK made a substitute motion that HB 366 BE AMENDED to SEGREGATE SUBSECTION 1 AND SUBSECTION 2 OF SECTION 7, PAGE 3. Motion carried by voice vote for SUBSECTION 2.

Discussion:

REP. PARKER explained Subsection 1. The committee discussed Sub-Section 1.

Vote: Motion carried by voice vote for Subsection 1.

Motion: REP. CLARK moved that HB 366 BE AMENDED on Page 2, Line 13 to STRIKE "...sound suppressors."

Discussion:

Mr. MacMaster explained to the committee members that silencers are illegal, but flash suppressors are not illegal.

Motion/Vote: REP. LANGE made a substitute motion that HB 366 be amended on Page 2, Line 13 to STRIKE "...sound." Motion carried by voice vote.

Motion/Vote: REP. KOOPMAN moved that HB 366 DO PASS AS AMENDED. Motion carried 15-3 by roll call vote with REP. GUTSCHE, REP. HARRIS, and REP. NOENNIG voting no.

(REP. HARRIS voted by proxy vote. REP. EVERETT back in room)

{Tape: 3; Side: A; Approx. Time Counter: 0 - 500}

{Tape: 3; Side: B; Approx. Time Counter: 0 - 50}

ADJOURNMENT

Adjournment: 11:01 A.M.

REP. DIANE RICE, Chairman

PAM SCHINDLER, Secretary

DR/ps

Additional Exhibits:

EXHIBIT ([juh32aad0.TIF](#))